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APR 26, 2005


CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

JUSTIN GABRIEL,

Plaintiff,

v.

FARMER'S ALLIANCE

Defendant.

FILE NO. CIV 05-5024

COMPLAINT

Comes now Plaintiff, Justin Gabriel ("Gabriel"), by and through his undersigned attorneys of record, and for his causes of action against this Defendant, Farmer's Alliance (Farmer's) states and alleges as follows:

JURISDICTION

1. Plaintiff is a resident of Rapid City, Pennington County, South Dakota.
2. Upon information and belief Defendant is a corporation incorporated in the state of Kansas with its principle place of business in McPherson, Kansas.
3. That jurisdiction is proper in this court pursuant to 28 USC § 1332 in that Plaintiff and Defendant are citizens of different states and the amount in controversy exceeds \$75,000.
4. This is an action for declaratory judgment pursuant to 28 USC § 2201 for purposes of determining a question of actual controversy between the parties, as more fully appears below.

PRELIMINARY ALLEGATIONS

5. On or about July 3, 2003, Plaintiff was a passenger in a vehicle driven by Brittany Greenwood ("Greenwood") in Spearfish, Lawrence County, South Dakota.
6. At approximately 2:57 p.m., Ms. Greenwood pulled out from a stop sign in attempt to make a left hand turn onto North Avenue in Spearfish, South Dakota.

7. Kelly Grenstiner was traveling north on North Avenue at the same time and made a lane change to pass a van making a right turn into the Safeway parking lot.
8. Ms. Grenstiner's speed in excess of the speed limit and her lane change caused a collision with the Greenwood vehicle.
9. Plaintiff suffered a permanent brain injury in the accident which he still suffers from today.

GENERAL ALLEGATIONS

10. Defendant issued a policy of insurance, account number 0121625, Policy number 065993 to Greenwood for the period from August 1, 2002, and ending August 1, 2003, covering property, automobile and excess liability. Exhibit 1.
11. Plaintiff commenced an action against Grenstiner for negligence. This action was settled out of court.
12. Plaintiff is an insured under the policy issued by Defendant in this action pursuant to the Endorsement, UN 222 04 01, B,1,(b).
13. The policy states that Montana law is used to interpret the policy under endorsement IL 01 67 09 00 part A.
14. The Montana Supreme Court in the case of *Hardy v. Progressive Speciality Insurance Company*, 67 P.3d 892 (Mont. 2003) found that the Montana anti-stacking statute was in violation of the Montana State Constitution. Exhibit 2.
15. Plaintiff demanded coverage under the underinsured portions of the policy.
16. Defendant initially denied underinsurance benefits to Plaintiff, however, this position was subsequently relented and an offer of \$50,000 was made by Defendant to Plaintiff, an amount equal to one policy's coverage limit.
17. Defendant has refused further payment as authorized under *Hardy v. Progressive Speciality Insurance*, i.e. the stacking of multiple policies in underinsurance coverage scenarios.
18. Defendant has issued seven policies each with a \$50,000 underinsurance benefit to the Greenwoods. Plaintiff seeks the declaration by this Court

that under the terms of the *Hardy* decision that the remaining \$300,000 in insurance coverage is available to Plaintiff.

WHEREFORE, Plaintiff respectfully requests this Court to enter judgment determining that:

1. There are seven policies in effect to which Plaintiff is an insured.
2. That Plaintiff is entitled to an aggregate of all policies.
3. For costs and disbursements in prosecution of this action.
2. For any and other relief as the Court deems just and proper.

Dated this 25th day of April, 2005.

JOHNSON EIESLAND LAW FIRM, LLP

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